

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SCOTT M. LONG and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Boston, MA

*Docket No. 98-324; Submitted on the Record;
Issued January 27, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on August 21, 1996, as alleged.

On September 5, 1996 appellant, then a 39-year-old warehouseman, filed a notice of traumatic injury (Form CA-1) alleging that, on August 21, 1996 when leaving one building to go to another, "my right leg gave in causing me to sit on the ground reinjuring my right leg and lower back." On the reverse side of the form, the employing establishment stated that appellant stopped work on August 22, 1996.¹

Accompanying the claim form, the employing establishment submitted its health unit records covering the period May through September 1996. The records indicated that as early as May 1996 appellant was suffering from acute recurrent right hip trochanteric bursitis.

On October 1, 1996 the record was supplemented to include employing establishment medical records covering September 28, 1995 through September 5, 1996 and indicating that appellant was suffering from right greater trochanteric bursitis in January 1996. Also submitted was a consent form for administering anesthesia and injecting steroids into his right hip area.

By letter dated October 10, 1996, the Office informed appellant that the medical reports submitted appeared to recommend or consider surgery. However, before such could be authorized a second opinion would be needed. The Office instructed appellant to take the letter to his treating physician to explain the need for a second opinion.

¹ On December 7, 1994 appellant filed a traumatic injury claim alleging that on May 4, 1994 he sustained an injury to his lower back. The Office of Workers' Compensation Programs assigned the claim no. A01-0327841 and on May 22, 1995 the Office accepted the claim for acute lumbosacral strain.

By another letter dated October 10, 1996, the Office requested detailed factual and medical information from appellant. Specifically, a detailed description of how the August 21, 1996 incident occurred and a physician's rationalized medical opinion causally relating a diagnosed condition to the August 21, 1996 incident.

By letter dated October 22, 1996, appellant responded to the request for information. He stated that "On August 21, 1996 ... I was going up the rear stairs of building two when my right hip gave way, causing me to fall to the pavement. I fell about three feet landing on my right hip." Appellant submitted an October 11, 1996 memorandum by Dr. John McA. Harris, Chief of the orthopedic section of the employing establishment. Dr. Harris stated that appellant had a very troublesome trochanteric bursitis which had not responded well to local injections and anti-inflammatories. He further stated that he relieved appellant from all duty until after surgery which was scheduled for December 11, 1996.

On October 30, 1996 the record was supplemented with an October 25, 1996 report by Dr. Harris, who explained that appellant needed to undergo a debridement of his bursae on the superficial surface of the right greater trochanter, after steroid injections, ultrasound and exercises failed to resolve his pain.

By decision dated November 18, 1996, the Office denied appellant's claim on the grounds that the evidence of record revealed conflicting histories of the August 21, 1996 incident and failed to establish that the claimed medical condition or disability is causally related to the incident on August 21, 1996.

By letter dated March 10, 1997, appellant requested reconsideration of the November 18, 1996 decision. In support of his request, appellant submitted a February 28, 1997 report by Dr. Harris who stated:

"[Appellant] has had problems with his right hip since he initially injured it while on duty with the [w]arehouse [d]epartment of the [employing establishment] on August 17, 1994. He had been between that injury and August 21, 1996, in a variety of physical therapy and home therapy modes of treatment, including exercises and local modalities, and had the trochanteric bursitis injected by me on at least two occasions."

Dr. Harris went on to say:

"On August 21, 1996 [appellant] fell and struck the right hip and buttock area while on duty with the [w]arehouse [d]epartment. This led to further pain in the area and on December 11, 1996, he was taken to the operating room where the bursal tissue about his right greater trochanter was excised and the fascia lata which had been compressing the bursal tissue against the greater trochanter was also in part excised."

Dr. Harris further stated:

“It is my opinion that the second injury of August 21, 1996, only aggravated a trochanteric bursitis which had been present for at least two years previously and which had never completely resolved. This is borne out by the fact that his employee health record and his veteran’s medical record reflect treatments by physical therapy and by me in employee health over all of the intervening years.”

By decision dated May 9, 1997, the Office denied modification of the prior decision.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitations of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.”² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ In this case, the Office found that appellant gave conflicting histories of the August 21, 1996 incident. Appellant has consistently maintained that on August 21, 1996 his right leg gave way and he fell to the ground in a sitting position. The Board does not find any conflict in appellant’s description of the incident. Consequently, the Board finds that appellant has established that the incident occurred on August 21, 1996, as alleged.

The second component of fact of jury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

The Board finds that this case is not in posture for decision. Appellant has submitted evidence sufficient to establish a *prima facie* claim and to require further development of the evidence.

² *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *David J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *Kathryn Haggerty*, 45 ECAB 383 (1994), *see* 20 C.F.R. § 10.110(a).

In the present case, the medical evidence submitted included, among other things, an October 25, 1996 report by Dr. Harris who stated:

“The surgery required is a debridement of [appellant’s] right trochanteric bursa or bursae. He has had both local ultrasound, exercises, and at least two steroid injections. The ultrasound and exercises basically reduced but did not completely remove the pain and the two steroid injections worked for only a few weeks at best. [Appellant] presently has an antalgic gait with a right Trendelenburg component. [Appellant] has pain to pressure on the skin over his right greater trochanter and pain at the extremes of motion of the hip.”

Also submitted was Dr. Harris’ February 28, 1997 report in which he stated:

“[Appellant] has had problems with his right hip since he initially injured it while on duty with the warehouse department of the [employing establishment] on August 17, 1994. He had been, between that injury and August 21, 1996, in a variety of physical therapy and home therapy modes of treatment, including exercises and local modalities, and had the trochanteric bursitis injected by me on at least two occasions.”

Dr. Harris also stated:

“On August 21, 1996, [appellant] again fell and struck the right hip and buttock area while on duty with the warehouse department. This led to further pain in the area and, on December 11, 1996, he was taken to the operating room where the bursal tissue about his right greater trochanter was excised and the fascia lata which had been compressing that bursal tissue against the greater trochanter was also in part excised. Since that time, he has had some improvement but continues to have local pain despite the fact that his wound is well healed. He continues at this time out on postoperative leave.”

Dr. Harris further stated:

“It is my opinion that the second injury of August 21, 1996, only aggravated a trochanteric bursitis which had been present for at least two years previously and which had never completely resolved. This is borne out by the fact that his employee health record and his [employing establishment] medical record reflect treatments by physical therapy and by me in employee health over all of the intervening years.

The Board finds that reports of Dr. Harris contain a diagnosis and support for a causal relationship between the August 21, 1996 employment incident and appellant’s trochanteric bursitis. The medical evidence is sufficient to require further development of the record by the Office.⁶

⁶ *Rebel L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

On remand, the Office should prepare a statement of accepted facts, and refer appellant along with the medical evidence of record for a second opinion evaluation and a rationalized medical opinion as to whether the August 21, 1996 employment-related incident aggravated appellant's preexisting trochanteric bursitis condition. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated May 7, 1997 and November 18, 1996 are set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, D.C.
January 27, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member